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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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INDEMNITY INSURANCE COMPANY OF NORTH AMERICA	:	ECF CASE
	:	
Plaintiff,	:	07 Civ. 10353 (GEL)
	:	COMPLAINT
- against -	:	
	:	
THE MASON AND DIXON INTERMODAL (MDII); UNIVERSAL TRUCKLOAD SERVICES, INC.; COMPANIA SUD AMERICANA DE VAPORES S.A.; CSAV AGENCY, LLC;	:	
	:	
Defendants.	:	

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Plaintiff, through its undersigned attorney, alleges as follows for its complaint
against defendants:

1. Plaintiff Indemnity Insurance Company of North America is a corporation organized under the laws of, and with its principal place of business in, the State of Pennsylvania. Plaintiff maintains an office at 140 Broadway, New York, New York, and sues herein as subrogated insurer of the cargo in suit, having paid the insurance claim of General Mills, Inc. and for and on behalf of the shipper, consignee and owner of the cargo as their interests may appear.

2. Defendants are believed to be corporations organized under the laws of, and with their principal places of business in, foreign sovereigns or certain of the fifty states.

3. This action includes an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1333 and 1337 as this action arises from the intermodal carriage of goods under a through bill of lading covering ocean carriage and interstate land carriage and is governed by federal statutes and federal common law related thereto.¹

4. Upon information and belief defendants at all material times conducted business as common carriers of cargo, including pick up, carriage and delivery of cargo within the State of New York, and the provision of services related thereto, and are subject to the *in personam* jurisdiction of this Honorable Court.

5. This action involves loss and damage to a shipment of 800 bags of yellow cake mix, a food product, which moved or was intended to move in container TGHU2365900 in intermodal carriage from Caledonia, Ohio, to Caracas, Venezuela, with intended ocean carriage aboard the M/V "CSAV SAN RAPHAEL, with door-pickup road transit commencing on or about December 28, 2006, and as also described in a document referenced as bill of lading 51609742 issued by or on behalf of defendants. (CSAV Ref.: 20075618, Invoice No.: 66699369, Booking No.: PCD6178112, MDII Ref.: 028457-0)

¹ The federal statutes applicable to the land stage of the intermodal carriage include, but are not limited to, the Carmack Amendment to the Interstate Commerce Act of 1887 ("Carmack"), Act of June 29, 1906, ch. 3591, 34 Stat. 584 (1906) (current version at 49 U.S.C. § 11706).

6. Defendants failed to deliver the shipment to the intended consignee as scheduled.

7. Defendants have alleged that while en route to Ohio the shipment sustained damage due to a road incident on or about December 28, 2006.

8. As a result of the reported incident the shipment sustained damage which rendered it unfit for intended usage and/or was deemed a constructive total loss.

9. Said loss or damage was the result of defendants' reckless failure to properly carry and care for the cargo in suit, and their breaches of fiduciary duties owed to the owners of the cargo

10. By reason of the aforesaid, plaintiff, and those on whose behalf it sues, has sustained damages in the amount of \$22,758.00, plus survey fees and other incidental expenses, no part of which has been paid although duly demanded.

11. Plaintiff sues herein on its own behalf and as agent and trustee for and on behalf of anyone else who may now have or hereafter acquire an interest in this action.

12. Plaintiff has performed all conditions precedent required of it under the premises.

WHEREFORE, plaintiff respectfully requests that judgment be entered against defendants jointly and severally:

- a) for the sum of \$22,758.00;
- b) for prejudgment interest at the rate of 9% per annum;
- c) for the costs of this action;
- d) for such other and further relief as this court deems proper and just.

Dated: New York, New York
November 15, 2007

LAW OFFICES,
DAVID L. MAZAROLI

s/David L. Mazaroli

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